

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBBIE A. PETERMAN and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Wichita, KS

*Docket No. 00-2664; Submitted on the Record;
Issued July 16, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty.

On September 5, 1997 appellant, a 40-year-old support services specialist, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained an emotional condition in the performance of duty. She described the nature of her condition as major depression and post-traumatic stress disorder. Appellant identified March 27, 1997 as the date she first became aware of her employment-related illness.

In an eleven-page statement, appellant provided a chronology of events dating back to April 1991, alleging a pattern of sexual discrimination on the part of the employing establishment and repeated reprisals for appellant having filed an Equal Employment Opportunity (EEO) complaint. In essence, appellant took exception to the employing establishment's refusal to reclassify and upgrade her position to the GS-13 level.¹ In the summer of 1994, appellant filed both an EEO complaint and an appeal with the Office of Personnel Management, which she later withdrew. Appellant alleged that the employing establishment subsequently retaliated by denying her numerous requests for reassignment and by issuing untimely and inaccurate performance appraisals. She filed a formal EEO complaint in March 1996. Following her latest EEO complaint, appellant alleged that she was ostracized and treated like an "out-cast." Management allegedly told coworkers not to speak with appellant and also prohibited her from participating in group meetings and activities. Appellant also alleged that management failed to provide her with information relevant to the performance of her assigned duties. Additionally, appellant stated that she was removed from a key project without explanation and that her constructive recommendations concerning agency cost saving methods

¹ Between January and May 1994, the employing establishment upgraded appellant's position to a GS-13 and subsequently downgraded the position to its prior classification as a GS-12.

had been ignored. She further alleged that the employing establishment disclosed her personal information to a third party in violation of the Privacy Act.

Appellant alleged that she was sent to Oklahoma City in April 1995 after the bombing of the Murrah Building to set up displaced federal agencies in the employing establishment's building, located a few blocks from the Murrah Building. Appellant explained that this was "a very stressful assignment as [she] had several friends and acquaintances who were directly impacted by death/injury in the actual bombing." She further explained that "[u]nder these difficult circumstances -- and in between many funerals, we set up DEA, Secret Service and ATF in our space."

After further development of the record, the Office of Workers' Compensation Programs issued a decision on April 13, 1998 denying appellant's claim for compensation. The Office found that appellant failed to establish that her claimed emotional condition arose in the performance of duty.

On April 9, 1999 appellant requested reconsideration. The Office, however, denied modification by decision dated May 4, 1999. Appellant filed another request for reconsideration on May 1, 2000. The Office reviewed the claim on the merits and in a decision dated May 24, 2000, the Office denied modification of the prior decision.

The Board finds that the case is not in posture for a decision.

In order to establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition or psychiatric disorder is causally related to the identified compensable employment factors.²

When working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.³ If a claimant implicates a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁴

² See *Kathleen D. Walker*, 42 ECAB 603 (1991).

³ *Albert K. Ignacio*, 50 ECAB 121, 123 (1998).

⁴ *Id.*

In this case, while the Office addressed the majority of appellant's alleged employment factors, the Office neglected to address appellant's allegations pertaining to her assignment to Oklahoma City following the April 19, 1995 bombing of the Alfred P. Murrah Federal Building. Appellant raised this issue initially in her statement that accompanied her September 5, 1997 claim. She reiterated her initial remarks in both of her subsequent requests for reconsideration.⁵ Not one of the Office's three merit decisions makes any reference to appellant's April 1995 assignment to Oklahoma City. Accordingly, on remand the Office should determine whether the above-mentioned factor constitutes a compensable factor of employment and, if so, whether the medical evidence establishes that appellant's condition is causally related to this factor or any other compensable factors of employment.

The May 24, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further consideration consistent with the Board's decision.

Dated, Washington, DC
July 16, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁵ In her April 9, 1999 request for reconsideration, appellant described her time in Oklahoma City as "a particularly distressing assignment and the experience caused recurring nightmares and increased anxiety."